



Prepared Testimony of  
Marc Savitt, President-Elect  
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on  
“Legislative Proposals on Reforming Mortgage Practices”  
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United States Congress  
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Good morning Chairman Frank, Ranking Member Bachus, and Members of the Committee, I am Marc Savitt, President-Elect of the National Association of Mortgage Brokers (“NAMB”). Thank you for inviting NAMB to testify today on “Legislative Proposals on Reforming Mortgage Practices.” We appreciate this opportunity to share with you our views on the *Mortgage Reform and Anti-Predatory Lending Act of 2007* (“H.R. 3915”).

NAMB is the only national trade association exclusively devoted to representing the mortgage brokerage industry, and as the voice of the mortgage brokers, NAMB speaks on behalf of more than 25,000 members in all 50 states and the District of Columbia. NAMB members are typically small business men and women, who adhere to a strict code of ethics and best lending practices when presenting consumers with an array of mortgage financing options to choose from. Mortgage brokers typically maintain business relationships with various lenders so they can offer a variety of loan products to their customers. Our members play a critical role in helping the American economy and in making the dream of homeownership a reality for American families.

**I. Introduction**

We take this opportunity to share with the Committee our longstanding view that abusive lending practices can and sometimes do occur throughout the entire mortgage marketplace, which includes originators, funding providers, servicers, affiliated companies, securitizers, and Wall Street investors.

However, addressing the manner in which individual loan officers present different loan programs to consumers and how consumers understand the features of the loan product they ultimately choose is a critical component of any reform effort. For this reason, we support the implementation and enforcement of minimum standards for all mortgage originators; the creation of a national registry to track and remove bad actors from the industry; improved enforcement of prohibitions against deceptive and misleading advertising of mortgage products; reformed mortgage disclosures; and efforts to improve consumer understanding of the mortgage process and products available in the marketplace.

We appreciate the all originator construct of H.R. 3915, but we must urge the Committee to exercise caution when contemplating the transfer of excessive risk to originators, lenders, and securitizers, because undue risk transference will only lead to higher prices and a lack of available credit for deserving consumers.

## ***II. Title I (Mortgage Origination)***

NAMB shares the Committee's concerns about responsible lending and, in particular, the need to implement uniform minimum standards for mortgage originators, regardless of corporate organization or structure. NAMB supports removing bad actors from the mortgage marketplace while at the same time preserving access to mortgage credit for those consumers who qualify. We applaud the uniform approach taken in H.R. 3915, but we do have some concerns regarding several elements of the bill and its practical implications for consumers and the industry.

### ***1. A Federal Duty of Care for All Mortgage Originators***

Since 2002, NAMB has consistently advocated for more stringent standards for all loan originators to protect consumers and curb abusive lending practices in the mortgage industry. We feel strongly that the value of an all originator approach, as in H.R. 3915 and H.R. 3012, lies in the uniformity of treatment of competitors in the mortgage industry. The acts of originating, funding, selling, servicing, and securitizing may all be conducted separately and independently, or may be engaged in collectively under one corporate structure or through affiliated business arrangements. This is why we believe it is important for consumer protections to relate to the function, as opposed to the structure of an entity. Consumers deserve the same level of protection no matter where they choose to obtain a mortgage loan.

Recent events in the mortgage market offer clear examples of why *all* mortgage originators should be subject to uniform minimum standards. The mortgage market of the 21<sup>st</sup> century has evolved in conjunction with the burgeoning growth of the secondary market for mortgages, but the laws, regulations and oversight of this market have lagged behind to the severe detriment of consumers. Today, any legislative, regulatory, or other governmental effort must account for the fact that the mortgage market is vastly different from the one that existed 20 years ago.

The traditional, "bank-centered," model of mortgage credit involved institutions originating, funding and holding the risk of credit in a mortgage portfolio, which was overseen by in-house risk management and monitoring procedures. Credit and market innovations, such as automated underwriting and lower relative prices, have separated these functions, allowing for greater efficiencies, diversification, spreading of risk, and increased liquidity. Accompanying these innovations were, of course, corporate structure and operational changes that influenced how customers obtained their loans, as well as how these loans were funded, managed and serviced.

Historically a lender was an entity that used its own money to originate and fund transactions. The loan was not sold, but rather kept in portfolio as an asset, and was serviced by the originating lender. This lender maintained a direct relationship with the borrower from the time of origination through funding and collection of the loan. Today, this is no longer the case. It is now common for originator entities and

individuals to act in various capacities, whether in a true creditor capacity (lender), a correspondent lender capacity,<sup>1</sup> a table funding capacity,<sup>2</sup> a broker capacity (despite the fact that their state-issued business license may say “mortgage lender”), or some combination thereof.

We do not deny that differences exist between depository and non-depository institutions, both in terms of their business models and how they are regulated, primarily because some of these entities are involved in businesses other than mortgage lending, namely banking. However, when it comes to the origination of mortgage loans, these entities are virtually indistinguishable, particularly in the eyes of consumers, and should be held to the same minimum standards.

The reality of today is that any legislative proposal should take into account how the mortgage market has evolved in relation to the burgeoning growth of the secondary market for mortgages. As was revealed in the recently released Government Accountability Office (“GAO”) report on *Recent Default and Foreclosure Trends for Home Mortgages*,<sup>3</sup> the problems facing the mortgage market are not exclusively attributable to one distribution channel and are the result of a combination of factors including: origination, underwriting, servicing, debt collection, the secondary market, securitization, and the bond rating system. We believe this report illuminates the need to address all market competitors, and we again applaud the balanced and even approach taken in the legislative proposals being discussed here today.

## 2. Licensing & Registration for All Mortgage Originators

The growth that has occurred in the mortgage finance industry has led to a corresponding rise in the number of uneducated and unlicensed mortgage originators, and it has become clear that these unlicensed and uneducated bad actors have found homes in all segments of the industry. Over the past seven years, the mortgage market has grown due to low interest rates, investor speculation, rising home values, the creation of new and innovative loan products, the growth of the secondary market for mortgage products, and the increased sophistication of securitizers. Additionally, market demand for more originators lead to a rapid rise in employment, often at the expense of a knowledgeable and responsible workforce. In a rush to hire, standards were loosened by some to achieve or enhance their growth. Without strong standards, this growth went unregulated and unchecked, resulting in a largely under-educated and unscreened originator workforce. Now, we are experiencing a contraction. To ensure we are not doomed to repeat this cycle again, it is critical to establish strong national standards that apply to all originator entities, regardless of size, corporate organization or structure.

When consumers are sitting across the table from a mortgage originator, they generally cannot distinguish one distribution channel from another. From the perspective of the consumer, there is essentially no difference between banks, lenders, and brokers when it comes to originating mortgage loans. Moreover, there is no reason to distinguish one distribution channel from another when each is engaged in essentially the same activity. It is not in the consumers’ best interest to draw artificial lines between entities based

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<sup>1</sup> When a lender is engaging in any one of these types of transactions and is offering multiple product lines of other lenders, that lender is acting as a correspondent lender.

<sup>2</sup> A correspondent lender can also engage in a table-funded transaction. Table funding is the origination of a loan by a correspondent lender with a simultaneous transfer or sale of the loan at the time of funding to a lender. In a table-funded transaction, the originating company is a creditor for purposes of TILA and therefore, state and federal agencies treat them as lenders. However, The Department of Housing and Urban Development (“HUD”) has determined that table-funded transactions are mortgage broker transactions for purposes of the RESPA, subjecting these transactions to the YSP disclosure requirement. Therefore, the correspondent lender who table funds is essentially both a lender and a broker.

<sup>3</sup> “*Information on Recent Default and Foreclosure Trends for Home Mortgages and Associated Economic and Market Developments*,” United States Government Accountability Office, October 16, 2007.

upon their size, structure, or place in the federal-state regulatory dichotomy. There is absolutely no relationship between the size or structure of a mortgage company and the quality of its loan officers. Regulating only small segments of a larger industry leaves cracks for bad actors to continually slip through, as evidenced by the ease of un-checked movement of loan officers from one employer to another in today's market.

The *Watters v. Wachovia* Supreme Court decision created a bifurcated regulatory landscape in the mortgage industry. Two separate mortgage camps now exist: those operating solely under federal regulation, *versus* those in the 'non-bank camp,' which are subject to both federal and state oversight. We have already begun to see some of the effects of the *Watters* decision, as non-bank mortgage operations looking for shelter from this layered oversight are being solicited by national banks to use their federal charter to bypass all state licensing and consumer protection regulations. Moreover, as many non-bank lenders continue to downsize and shut-down mortgage operations, countless loan officers are being terminated, and we are now seeing these individuals receive job offers from federally-chartered institutions that are marketing themselves by saying how easy it is for their loan officers to make loans and avoid state licensing requirements designed to protect consumers. The *Watters* decision has created an imbalance in the mortgage industry oversight scheme that regulates a market vastly different from the one that existed 20 years ago, at the advent of the secondary mortgage market.

More must be done to increase professional standards for all mortgage originators. Since 2002, NAMB has advocated strongly that a minimum level of education and mandatory testing for all loan officers, regardless of employment, must be a central component of any effective solution to the problem of abusive lending. Education and testing of every mortgage originator helps to ensure that consumers will receive accurate and consistent product information that will allow them to make an informed decision about different loan financing options available in the market. To ensure all mortgage originators remain knowledgeable and competent to address customer concerns, NAMB also supports mandatory continuing education and professional ethics training. Further, NAMB believes that all mortgage originators should be subject to a federal criminal background check to prevent bad actors from entering or remaining in the industry.

The application of these minimum professional standards to *all* originators will create a mortgage market where consumers are free to shop and compare mortgage products and pricing across distribution channels without fear or confusion. Although it continues to be suggested by some that requiring minimum standards for all loan originators is unnecessary, we strongly disagree. The creation and implementation of a national minimum standard for every mortgage originator is neither burdensome nor duplicative of existing oversight and regulation. Such a standard, when implemented across every distribution channel, raises the bar for anyone currently failing to meet it, and imposes no greater restrictions on any state or entity whose requirements already surpass it.

For these reasons, we support the all originator concept contained H.R. 3915. It is a balanced and even approach that includes every mortgage originator who will sit down with a consumer and help them through the application and origination process, leaving no refuge within the industry for bad actors.

### *3. Creation of a National Registry*

NAMB has long supported the establishment of a national registry, provided: (1) it is governed by a federal agency such as the FTC, the Federal Reserve Board, or HUD; (2) the federal government requires every individual mortgage originator, including loan officers working for federal and state-chartered banks and lenders, credit unions, and mortgage brokers to register; (3) every individual pays a fee to be in the registry; and (4) the fee is used to cover operational costs for the registry, create funds earmarked for additional enforcement of mortgage laws, and assist ongoing consumer financial literacy programs.

Today, a single national system to collect, store and track information on all mortgage originators, whether state or federally regulated, does not currently exist. The creation and establishment of a national registry would help to identify and track bad actors operating within the ranks of the mortgage industry. We believe individuals who choose to work in the mortgage industry should be held accountable for their actions. If any mortgage originator is found guilty of improper conduct, he or she should be kicked out of the industry permanently.

A national registry that includes all originators will aid significantly in the effort to fight mortgage fraud uniformly across all segments of the industry, and will stop bad actors from remaining in or entering the industry. Additionally, a national registry of all mortgage originators could also serve as a clearinghouse for complaints against mortgage originators, regardless of whether they are state or federally-regulated, thus aiding consumers who often do not know who to call or where to turn when experiencing a problem with their mortgage originator.

Without universal inclusion in the registry however, bad actors will remain free to move, unchecked, from one entity to another and one community to another without any interference, and consumers will continue to bear the burden of trying to identify the appropriate regulator to contact when there is a problem. A national registry will afford *all* current and prospective homebuyers protection from predatory lenders, who should be given nowhere to go but out of the industry entirely. We support the inclusive language in H.R. 3915, and we strongly urge the Committee to ensure that no market participant be excluded from the registry as the bill is debated and moved through the legislative process.

#### *4. Additional Specific Disclosures.*

NAMB believes that consumers who understand the mortgage process are better able to make informed decisions about loan products, features, and pricing options. We also believe that improved and mandatory disclosures will help expose the activities of certain unscrupulous mortgage originators who try to shield themselves from detection by keeping consumers uninformed. NAMB appreciates the inclusion of language in the bill that calls for improved disclosures to consumers early on in the mortgage process and requires mortgage originators to disclose their relationship with the consumer.

The proliferation of affiliated business arrangements and the blurring of once clear lines of delineation between distribution channels have made it more difficult than ever for consumers to understand the role that their mortgage originator will play in the loan transaction. NAMB believes consumers will benefit from a clear, upfront, and uniform disclosure of the role of the mortgage originator. To enhance consumers' ability to comparison shop, a full and fair disclosure of the mortgage originator's role should be required to be given to borrowers at the onset of the mortgage shopping experience. We cannot emphasize enough the importance of requiring uniform disclosures to be given to consumers in all mortgage transactions. Anything less will confuse consumers and risk causing them to select a higher cost mortgage.

The Federal Trade Commission's February 2004 Staff Report – "The Effect of Mortgage Broker Compensation Disclosure on Consumers and Competition: A Controlled Experiment" – illustrates how the lack of uniform disclosures can actually result in increased cost for consumers. The staff report on HUD's 2002 proposed RESPA rule, which required certain disclosures by mortgage brokers only, stated that when such disclosures were tested on consumers, they were likely to "confuse consumers, cause a significant proportion to choose loans that are more expensive than the available alternatives, and create substantial consumer bias against broker loans, even when broker loans cost the same or less than direct lender loans."

Since 1998, NAMB has urged the U.S. Department of Housing and Urban Development (“HUD”) to adopt a role of the mortgage originator disclosure as part of the required disclosures under the Real Estate Settlement Procedures Act (“RESPA”); however, to date, HUD has failed to implement any such standard. Some states have adopted this as a requirement, but this is still not enough.

We strongly believe that a simple, straight-forward disclosure of the mortgage originator’s role, will eliminate any confusion on the part of consumers and strengthen consumers’ bargaining position when shopping for a mortgage.

A direct analogy may be drawn to the real estate brokerage industry, which is also largely state-regulated. Not unlike mortgage originators, real estate brokers and agents deal with different parties to a transaction (buyers and sellers) in a variety of different capacities. Real estate brokers and agents may enter into an agency relationship with either a buyer or a seller; or they may function in a limited agency capacity for both the buyer and the seller. Alternatively, they may elect not to enter into any agency relationship at all and act exclusively as an intermediary. We believe that mortgage originators can operate under a similar model, where they choose, along with their customers, to enter into an agency relationship with either the lender or the borrower; serve as the limited agent for both the lender and the borrower; or, act as an intermediary only in the mortgage transaction.

Because of the complex and sometimes uncertain nature of the relationship between originators and borrowers, we believe consumers will benefit from a clear, concise, and mandatory disclosure of that relationship early in the mortgage shopping stage. In addition to choosing the loan product and pricing options that they prefer, consumers should be given the opportunity to make an informed choice of whether to shop around or work with a mortgage originator who is willing and able to act as their agent in the transaction. Requiring all originators to clearly and accurately inform consumers of their role in the transaction will enhance consumers’ ability, and perhaps their desire, to comparison shop and find a loan product and originator they are comfortable with.

## *5. Anti-Steering*

Title I includes an anti-steering provision, which applies to all mortgage originators. This provision specifically prohibits anyone from paying and any mortgage originator from receiving incentive compensation that is based on or varies with the terms of a loan (including yield spread premium (“YSP”)). While we support disconnecting compensation from the origination of specific loan products or features of those products in an effort to address steering, we have grave concerns over the practical, and perhaps unintended, consequences of this provision on the industry as a whole, but particularly the small business broker channel and the consumers that it serves.

For example, a stated objective of several fair lending laws is to ensure affordable credit is available to low and moderate income borrowers and that lending occurs in outlying communities that are traditionally underserved by large lenders and banks. The government clearly wants to encourage lending to low and moderate income individuals and underserved communities, as evidenced through laws such as the Community Reinvestment Act. This paradox in housing objectives must be addressed. We should be careful to avoid the unintended consequence of negatively impacting lending to deserving low and moderate income borrowers or underserved communities. This is especially necessary given the current market climate where lending to these market segments is already suffering due to the credit crunch.

We urge the Committee to amend and clarify the anti-steering language included in Title I to make clear that mortgage originators are not prohibited from earning indirect compensation. The financing of points, fees, and indirect originator compensation, regardless of what it is called, helps consumers by lowering the cash needed to close a mortgage transaction while compensating the originator for his or her services.

The use of indirect compensation has proven to be a vital tool for first-time homebuyers, and critically important in helping countless consumers purchase a home or manage their finances.

Today, most consumers shop for a loan asking for a loan rate at zero points. In this scenario, the consumer is asking to finance into the loan rate the ‘origination fee’, a term of art understood in the market to refer to points paid upfront to originate the loan. When the origination fee is financed through the interest rate it becomes what is known in the market as indirect compensation, which is paid by the wholesaler, retailer or investor/secondary market to the mortgage originator (*i.e.*, yield spread premium, service release premium, or gain on sale). This zero point loan is the “typical loan” that represents somewhere between 85 and 90% of the market because it has clear benefits to the consumer: (1) it lowers the amount of cash needed to bring to closing; and (2) may actually decrease the total origination fee paid on the loan if a borrower remains in the home only 5 to 7 years, or refinances within that time period.

Indirect compensation is how mortgage originators get paid for their loan origination services when a consumer does not want to pay any points, or is able to pay only some of the fees upfront. Indirect compensation is also a legitimate and legal way for borrowers to forgo paying their closing costs upfront and instead, finance those costs through the interest rate. When the consumer chooses not to pay any origination fees or closing costs upfront, they are receiving what is known as a no-cost and/or no-fee loan. Again, zero point and no-cost/no-fee loans are offered widely by **both** broker and retail lender channels and made available because of the indirect compensation structure that currently exists.

Thus, indirect compensation is beneficial for many consumers who are ready to own a home but have to overcome the hurdle of significant closing costs, or for customers that choose to realize the savings of keeping their cash and financing their costs through their loan rate. Choosing to finance closing and origination costs through the rate allows borrowers to purchase and start building wealth through their home without requiring significant outlay of cash at the onset of the loan.

As stated above, every mortgage originator that does not keep loans in portfolio earns this indirect compensation – it’s just called something different for each competing originator entity. YSP is a payment by a wholesaler to a retailer in a broker transaction in return for operating costs absorbed, services performed, closing costs financed, if applicable, and/or the value of the loan. Service release premium (“SRP”), or gain on sale, is what a lender, banker, or wholesaler receives as payment from an investor – again, for costs absorbed, services performed, the financing of any closing costs, and/or the value of the loan.

Indirect mortgage originator compensation has existed from the time loan origination services expanded out of the S&Ls and the banking industry moved away from keeping loans in portfolio. YSP came to the forefront in 1992 because of a HUD ruling under the Real Estate Settlement Procedures Act (“RESPA”). This ruling exclusively required mortgage broker transactions (those that do not fund and close loans in their name or those that table-fund) to disclose YSP on the good faith estimate (“GFE”) and again on the HUD-1. As a result, the only real difference that exists in today’s market between SRP, gain on sale and YSP is that YSP is the only form of indirect compensation that is currently required to be disclosed, both on the GFE and again at closing.

This artificial line, drawn by HUD in 1992 and based on ‘industry jargon’ and entity structure, rather than function, has shifted intense focus on YSP, while shielding SRP and gain on sale from similar scrutiny. This is despite the fact that prior to the 1992 HUD ruling all three were considered one in the same – namely, indirect compensation paid to the originator by either the lender or the investor/secondary market in return for services performed and the value of the loan.

Any provision that intends, or is interpreted to intend, to ban indirect compensation will have a detrimental impact on the marketplace, eliminating cost-effective loan options for thousands of consumers and increasing costs significantly. In addition, any provision that intends, or is interpreted to intend, to ban only the broker's compensation will destroy small business mortgage originators in this country, resulting in fewer market participants, less competition, and ultimately higher prices for consumers. With small business mortgage originators unable to earn indirect compensation, they will be prevented from assisting any consumer who chooses or is unable to come to the closing table with anything less than 20% down payment and cash for full closing costs and origination fees. Consumers looking for a zero point loan, or a no-cost/no-fee loan, will be forced to turn to the banks, placing those entities in a market position to charge the consumer even more for origination services. Furthermore, differential treatment of YSP will simply create a market distortion, pushing brokers to get a wholesale lines of credit, thereby enabling mortgage brokers to earn a SRP rather than YSP, similar to their industry counterparts.

We do not believe it is the Committee's intent to legislatively pick winners or losers in a fiercely competitive marketplace or further disadvantage small business in the mortgage industry. We also do not believe it is the Committee's intent to disadvantage the very consumers who are most in need of greater access to affordable credit. NAMB looks forward to continuing to work closely with the Committee on this issue, and we hope the Committee will consider revising the language in Title in recognition of the important role that indirect compensation plays in helping consumers become homeowners.

6. *Requiring Mortgage Originators who Advertise the "Best" Deal to Actually Deliver the Best Deal to their Customers*

NAMB believes in strengthening prohibitions against the deceptive marketing and advertising of mortgage products. Last month, the Federal Trade Commission ("FTC") warned over 200 mortgage lenders, brokers, and media outlets that some ads appearing in print and online may be in violation of federal law. The FTC noted that "many mortgage advertisers are making potentially deceptive claims about incredibly low rates and payments, without telling consumers the whole story – for example, that these low rates and payments apply for a short period only and can go up substantially after the loan's introductory period. Homeownership is the American dream, but it can become a nightmare for consumers who don't have the information they need to understand the terms of their mortgage."<sup>4</sup>

We support the efforts being undertaken by the FTC and we urge all state and federal regulators to strengthen and increase enforcement actions against any party involved in the deceptive advertising or marketing of mortgage loan products or services to consumers.

While we support measures designed to ensure truthful and clear advertising to consumers, we must emphasize that what is "best" depends upon three inter-related concepts: product availability, price, and service. Focusing solely on a price of a product may not yield the "best" result for a consumer. Only the consumer can determine the "best" combination of factors that fit their needs. The consumer is the decision maker, *not the mortgage originator*.

Therefore, it is imperative that provisions in this bill that address the interests of the consumer be crafted in a manner that ensures that the integrity of the consumer decision-making process remains intact. Consumers currently enjoy the freedom and responsibility to choose their own mortgage products, take advantage of the competitive marketplace, shop, compare, ask questions, and expect answers. Consumers are and must remain the ultimate decision makers regarding the product, price, and services purchased in

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<sup>4</sup> "FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive," FTC Press Release, September 11, 2007, quoting Lydia Parnes, Director, FTC Bureau of Protection.

conjunction with mortgage financing. Selecting a mortgage is a very personal choice, and *only* the consumer can determine whether a particular loan product is “suitable” for his or her financial needs and goals, or if it might be in his or her “best” interest to continue shopping.

### *7. Surety Bond or Net Worth Requirement*

We are supportive of uniform national standards for all mortgage originators that will increase accountability and professionalism in our industry, however, we believe requiring an unreasonably large surety bond or unrealistically high net worth will severely disadvantage small businesses, without providing any real benefit to consumers. We support the concept of a required surety bond for all mortgage originators, and appreciate that the language in H.R. 3915 would not require originators to satisfy both a surety bond and net worth requirement. Recognizing the clear burden that an unreasonably large bond or net worth requirement would have on small business originators, we believe that a \$50,000 bond is adequate, provided that number is scaled up to \$100,000 for larger volume originators. A \$50,000 bond requirement will provide sufficient protection for consumers and the market, while not severely disadvantaging small businesses.

Although it has been suggested by some that a minimum net worth and capital requirement should be imposed on all mortgage market participants, regardless of business activities or size, as a measure of stability and accountability in the market, we have witnessed first-hand that such requirements do little to protect consumers or the market.

Net worth is illusory. Many (large) lending companies that were once viewed as financially solid are bankrupt and gone, proving that capital and net worth requirements are ineffective indicators of a mortgage originator’s ability to service or make the consumer whole. A financial statement provides no assurance at all that an originator will *maintain* their net worth; it simply provides a snapshot and can easily disappear. Imposing capital and net worth requirements does not enhance lending standards, but rather merely promotes market shares among competing channels. Capital and net worth requirements succeed in erecting barriers to small businesses entering the market, place an unfair and undue burden on them, and inhibit competition, leaving consumers with fewer choices and increased costs, while failing to offer any real protection to consumers now or in the future.

In short, size and wealth do not automatically equate to honesty and competence. This fact must guide any legislative or regulatory action.

### *III. Title II (Minimum Standards for All Mortgages)*

NAMB strongly supports the all originator construct of H.R. 3915, and we believe it is important for underwriters to make a reasonable assessment of a borrower’s ability to repay a mortgage loan at the time such a loan is consummated. We also support the additional standards and requirements included in Title II, which prohibit certain prepayment penalties, single-premium credit insurance, and mandatory arbitration. However, we believe the regulators must be cautious when crafting corresponding rules, so that they do not unintentionally expose consumers to the risk of being arbitrarily rejected for credit when it is needed.

Although we are supportive of the ability to repay and net tangible benefit requirement included in H.R. 3915, objective parameters are critical because we do not feel that consumers will ultimately be served by a standard that allows for a wide range of subjectivity. We fear a lack of objective parameters could have numerous unintended consequences, leading to many consumers being shut out of the mortgage market without justification. The market has already adjusted, and we are concerned that some of the language in

Title II of H.R. 3915 risks harming consumers and possibly exacerbating the current problems in the real estate market.

#### ***IV. Title III (High-Cost Mortgages)***

While NAMB is supportive of the all originator approach in H.R. 3915, we are extremely concerned that specific provisions in Title III will only result in further harm to many consumers who are currently in the most need of credit. We urge the Committee to consider deleting Title III in its entirety, at least until the market has an opportunity to stabilize.

##### ***1. Points and Fees Threshold***

Section 301 would reduce the “points and fees” trigger for “high-cost loans” under the Home Ownership and Equity Protection Act (“HOEPA”) from 8% to 5%, and include all costs and fees charged to the borrower. NAMB opposes this provision of Title III of H.R. 3915 and believes it is imperative that any legislation addressing the “points and fees” threshold for HOEPA directly and expressly exclude indirect mortgage originator compensation, as well as any seller concessions, seller-paid points, and government loan program fees (*i.e.*, FHA / VA) from the calculation.

There are two principal reasons for our stated position. First, we are concerned that lowering the threshold will capture a large number of loans and borrowers that are not in need of the extra protections that HOEPA provides. Reducing the trigger to 5% and including all costs and fees in that calculation will shrink the availability of credit for borrowers who need it. We are concerned that many lenders will decide not to make loans that cross this new HOEPA threshold, which will put many consumers in a particularly perilous position as interest rates rise. As a result, the supply of smaller second mortgages will dry up and consumers will be forced to choose between high-cost credit card debt and refinancing out of favorable first mortgages to meet their immediate needs.

Second, under HOEPA currently, a loan is covered if one of two thresholds are met: (1) the Annual Percentage Rate (“APR”) exceeds Treasury securities by 8%, and 10% for second mortgages; or (2) the total “points and fees” paid by the consumer exceed the greater of 8% of the loan amount or a set dollar amount (\$547 for 2007), adjusted annually for inflation. Indirect mortgage originator compensation is *already captured* in the APR threshold. Including this compensation in the “points and fees” trigger, as proposed in H.R. 3915, is unnecessary and duplicative. We strongly urge the Committee to revise Title III and raising the “points and fees” threshold.

##### ***2. Prohibition Against Financing Points and Fees***

Section 302 of H.R. 3915 prohibits the financing of points or fees on high-cost loans covered by HOEPA. We urge the Committee to reconsider this prohibition, and either remove it or revise Title III so that trigger is raised significantly. In practice most points and fees on non-prime loans are financed, because most non-prime borrowers do not have ready access to the cash needed to pay such points and fees or they do not want to tap other illiquid assets to do so. This restriction, if enacted, would effectively eliminate from the market all borrowers who can’t qualify for a non-high-cost mortgage, and who are unable to afford the significant upfront costs associated with obtaining a mortgage loan.

We believe it is important to react to a real risk, not merely a perceived risk. Currently, the true magnitude of the problem in the mortgage market remains unclear. There are conflicting reports and estimates that vary significantly in their assessment of the real extent of the current and projected market

turmoil. The recently released GAO report<sup>5</sup> predicted that roughly 1.1 million loans originated from 2004-2006 would foreclose over a six to seven year period, compared with the estimated 2.2 million foreclosures that the Center for Responsible Lending (“CRL”) has forecasted. These dramatically contrasting figures serve to further confuse the issue and reinforce the importance of not over-reacting to a perceived or exaggerated problem, which could result in greater harm than good for consumers. Tempered responses and proposals are critical in a market that is already prone to over-reaction.

### 3. *Pre-Loan Counseling Requirement*

NAMB opposes the inclusion of provisions intended to expand and require counseling programs for borrowers, prior to purchasing a high-cost loan. Counseling requirements unnecessarily slow down the loan process for consumers and make “emergency” loans virtually unattainable. Moreover, the experiences in Ohio have clearly demonstrated that mandatory counseling harms both consumers and the neighborhoods in which they live.

## V. *Escrow, Appraisal and Mortgage Servicing*

Although not specifically addressed in H.R. 3915, we want to take this opportunity to commend Reps. Kanjorski (D-PA), Wilson (D-OH), Hodes (D-NH), and Chairman Frank (D-MA) for proposing the *Escrow, Appraisal, and Mortgage Servicing Improvements Act* (“HR 3837”). NAMB believes that efforts to require escrows for certain mortgage loans, to improve mortgage servicing, promote sustainable homeownership opportunities, and improve the appraisal process are laudable, and we support legislation that furthers these ends.

## VI. *Conclusion*

NAMB appreciates this opportunity to share its views on the *Mortgage Reform and Anti-Predatory Lending Act of 2007*. Everyday our members live and work in their communities alongside consumers; and from this we know that consumers want to be able to get a loan they can afford and keep. We strongly believe that consumers deserve the same level of protection no matter where or with whom they choose to get their mortgage loan from, and we applaud the broad and even approach taken in crafting this legislation.

As was revealed in the aforementioned GAO report<sup>6</sup>, consumers have been negatively affected by a myriad of market forces and participants, and the root of the problems in the mortgage market today cannot be traced to any single source. Consequently, the solutions to today’s problems must encompass and be embraced by all market participants.

While we are supportive of many of the overall concepts embodied in H.R. 3915, particularly the all originator construct, we urge the Committee to exercise caution when contemplating legislative action that could significantly reduce the availability of credit and unintentionally harm many of the consumers who need help the most. NAMB looks forward to continuing to work with this Committee on its efforts to protect consumers from abusive lending practices, while maintaining the availability of affordable credit and preserving opportunities for small businesses throughout the nation.

Thank you for the opportunity to appear before this Committee and discuss this very important piece of legislation. I am happy to answer any questions that you may have.

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<sup>5</sup> “*Information on Recent Default and Foreclosure Trends for Home Mortgages and Associated Economic and Market Developments*,” United States Government Accountability Office, October 16, 2007.

<sup>6</sup> *Id.*